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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2070

DANIEL HESTER
17852 Orange Belt Drive, #7
Porterville, CA 93257

A C C U S A T I O N

Respiratory Care Practitioner License No. 18816

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 3, 1996, the Respiratory Care Board issued Respiratory Care Practitioner License Number 18816 to Daniel Hester (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).

19 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
20 substantially related to the qualifications, functions, or duties of a respiratory care
21 practitioner.”

22 7. Section 3752 of the Code states:

23 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
24 made to a charge of any offense which substantially relates to the qualifications,
25 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
26 the meaning of this article. The board shall order the license suspended or revoked, or
27 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
28 conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section
2 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
3 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
4 accusation, information, or indictment.”

5 8. Section 3752.6 of the Code states:

6 “For purposes of Division 1.5 (commencing with Section 475), and this chapter
7 [the Respiratory Care Practice Act], a crime involving sexual misconduct or attempted
8 sexual misconduct, whether or not with a patient, shall be considered a crime
9 substantially related to the qualifications, functions, or duties of a respiratory care
10 practitioner.”

11 9. Section 3752.7 of the Code states:

12 “Notwithstanding Section 3750, any proposed decision or decision issued under
13 this chapter [Chapter 8.3, the Respiratory Care Practice Act] in accordance with the
14 procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division
15 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or
16 registrant engaged in any act of sexual contact, as defined in Section 729, with a patient,
17 or has committed an act or been convicted of a sex offense as defined in Section 44010 of
18 the Education Code, shall contain an order of revocation. The revocation shall not be
19 stayed by the administrative law judge. For purposes of this section, the patient shall no
20 longer be considered a patient of the respiratory care practitioner when the order for
21 respiratory procedures is terminated, discontinued, or not renewed by the prescribing
22 physician and surgeon.”

23 10. California Code of Regulations, title 16, section 1399.370, states:

24 “For the purposes of denial, suspension, or revocation of a license, a crime or act
25 shall be considered to be substantially related to the qualifications, functions or duties of
26 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
27 perform the functions authorized by his or her license or in a manner inconsistent with the
28 public health, safety, or welfare. Such crimes or acts shall include but not be limited to

1 those involving the following:

2 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
3 abetting the violation of or conspiring to violate any provision or term of the Act.

4 “(e) Conviction of a crime involving lewd conduct, prostitution or solicitation
5 thereof, or pandering and/or indecent exposure, as defined by the Penal Code.”

6 3. Penal Code section 23 states:

7 "In any criminal proceeding against a person who has been issued a license to
8 engage in a business or profession by a state agency pursuant to provisions of the Business and
9 Professions Code or the Education Code, or the Chiropractic Initiative Act, the state agency
10 which issued the license may voluntarily appear to furnish pertinent information, make
11 recommendations regarding specific conditions of probation, or provide any other assistance
12 necessary to promote the interests of justice and protect the interests of the public, or may be
13 ordered by the court to do so, if the crime charged is substantially related to the qualifications,
14 functions, or duties of a licensee.

15 "For purposes of this section, the term 'license' shall include a permit or a
16 certificate issued by a state agency.

17 "For purposes of this section, the term 'state agency' shall include any state board,
18 commission, bureau, or division created pursuant to the provisions of the Business and
19 Professions Code, the Education Code, or the Chiropractic Initiative Act to license and regulate
20 individuals who engage in certain businesses and professions."

21 COST RECOVERY

22 11. Section 3753.5, subdivision (a) of the Code states:

23 "In any order issued in resolution of a disciplinary proceeding before the board,
24 the board or the administrative law judge may direct any practitioner or applicant found to have
25 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
26 investigation and prosecution of the case."

27 12. Section 3753.7 of the Code states:

28 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall

1 include attorney general or other prosecuting attorney fees, expert witness fees, and other
2 administrative, filing, and service fees."

3 13. Section 3753.1 of the Code states:

4 "(a) An administrative disciplinary decision imposing terms of probation may
5 include, among other things, a requirement that the licensee-probationer pay the monetary costs
6 associated with monitoring the probation. "

7 FIRST CAUSE FOR DISCIPLINE

8 (Substantially related conviction)

9 14. Respondent is subject to disciplinary action under Business & Professions
10 code sections 3750(d) and 3752 [conviction], 3750(g), 3750(j) [corrupt act], 3752.6 [crime
11 involving sexual misconduct], 3752.7 [automatic revocation for sexual misconduct crime] and
12 California Code of Regulations (CCR) 1399.370(e) in that he was convicted of violating Penal
13 Code section 236, false imprisonment; Penal Code section 314.1, indecent exposure; and Penal
14 Code section 647.6(a), annoying or molesting a child under the age of eighteen years, which are
15 substantially related to the practice of respiratory care. The circumstances are as follows:

16 15. On or about May 22, 2006, an Information titled *People of the State of*
17 *California vs. Daniel Lee Hester*, case no. F06902168-4 was filed in Superior Court, Fresno
18 County, Central Division. Count 1 alleged that on or about February 6, 2006, Respondent
19 committed a violation of Penal Code section 220, a felony, assault with intent to commit rape.
20 Count 2 alleged that Respondent committed a violation of Penal Code section 664/209(b)(1), a
21 felony, attempted kidnapping to commit another crime. Count 3 alleged that Respondent
22 committed a violation of Penal Code section 664/207(a), a felony, attempted kidnapping. Count
23 4 alleged that Respondent committed a violation of Penal Code section 236, a felony, false
24 imprisonment by violence. Count 5 alleged that Respondent committed a violation of Penal
25 Code section 314.1, a misdemeanor, indecent exposure. Count 6 alleged that Respondent
26 committed a violation of Penal Code section 647.6(a), a misdemeanor, child molesting.

27 16. Based on the allegations contained in the Information, the Office of the
28 Attorney General filed a Penal Code section 23 motion on or about April 5 , 2006. Judge John

1 Vogt granted the motion, and respondent was ordered “not to be working in any respiratory care
2 or alternatively, defendant not to treat any juvenile patients.”

3 17. On or about January 29, 2007, after a jury trial, respondent was convicted
4 of misdemeanor violations of Penal Code section 236, false imprisonment; Penal Code section
5 314.1, indecent exposure; and Penal Code section 647.6(a), child molesting.

6 18. On or about March 26, 2007, in Department 62 of the Fresno County
7 Superior Court of California, Central Division, Judge Lewis sentenced respondent. Respondent
8 was placed on three years conditional probation, committed to 365 days in custody which was
9 stayed except for 81 days with credit for time served of 81 days. He was ordered to pay fines
10 totalling \$200.00. He was ordered to register as a sex offender pursuant to Penal Code section
11 290, to attend a counseling program during probation and to provide a copy of the minute order
12 to the counselor; the counselor to address issues of sexual dependency to the court. Respondent
13 was ordered to have no contact with minor children other than his own, and he may attend school
14 functions and church for the duration of probation.

15 19. Therefore, respondent’s license is subject to revocation because he was
16 convicted of violating Penal Code sections 236, 314.1 and 647.6(a), which are substantially
17 related to the practice of respiratory care.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking Respiratory Care Practitioner License Number 18816, issued to Daniel Hester, pursuant to Business & Professions code section 3752.7;
2. Ordering Daniel Hester to pay to the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: April 3, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant